IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1130 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURESHBHAI BABABHAI NAIK - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR JM BAROT for Appellant(s) : 1,
MS.PANDIT, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 20/04/2007

ORAL JUDGMENT

Present appeal is preferred under Section 374 read with Section 386 of the Code of Criminal Procedure, challenging the legality and validity of

the order of conviction and sentence passed by the learned Special Judge, Mehsana in Essential Commodity Case No.5 of 1994, on 23rd October, 1997. The learned trial Judge after recording the finding of guilt for the offence punishable under Section 3 read with Section 7 of the Essential Commodities Act, (herein after referred to as 'the Act') imposed six months simple imprisonment and ordered to pay a fine of Rs.1,000/-, in default thereof, to undergo three months simple imprisonment.

2. It is submitted by Mr.Barot that there was no offence to link the accused with the crime for the offence punishable under Section 7 of the Act, as there is no cogent evidence as to violation of any Control Order issued under Section 3 of the Act and for that learned Advocate has taken me through the complaint (Exh.16), so also, the question asked to the accused while recording the plea on 19th February, 1997.

3. I have heard learned Addl. Public Prosecutor, Ms.Pandit for the State. She has

submitted that the learned trial Judge has mainly concentrated while linking the accused with the crime for violation of Rule 123 of the Gujarat Motor Vehicles Rules and observing that the accused was found responsible for importing the cattle from other State and thereby accused committed breach of Section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1958. This Bombay Essential Commodities and Cattle (Control) Act, 1958 is made applicable in the State of Gujarat vide sub-section 2 of Section 1 of the said Act.

4. To appreciate the legality and validity of the order of conviction and mainly the reasons assigned by the learned trial Judge, it would be proper for the Court to state the prosecution case in brief.

4.1 It is alleged that the accused was carrying and transporting five buffaloes in matador bearing Registration No.GJ-2T-6858 on 11/1/1993 and he was stopped and intercepted at about 7:45 p.m., near IFCO Railway Crossing on the highway. Statement of the

driver was recorded in connection with the offence alleged in the complaint which is at Exh.17. It is contended in the complaint at Exh.16 that accused was found responsible for violation of Section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1958. The second allegation is that the accused had loaded all this five buffaloes in a tempo of Eicher Model without making necessary arrangement for the live stock that was being carried and thereby committed the offence punishable under the Prevention of Cruelty to the Animals Act, 1960. It is also alleged that without prior permission the accused was transporting these five buffaloes and therefore it was an act contrary to the scheme of Rule 123 of the Gujarat Motor Vehicles Rules, 1989. The fourth allegation against the accused is that he had violated the conditions of Control Order of 1975 whereby the movement of cattle is placed under regulation and the accused ought not to have imported these buffaloes from the neighbouring State without permission or permit from the concerned District Collector. It is also alleged that the accused had violated the Clause-3 of the Gujarat Import Cattle

Order, 1982. It is further alleged that buffaloes that were imported from neighbouring State were not even given the vaccines and thereby he has committed offence punishable under the Gujarat Cattle Disease Control Order, 1963.

5. On close reading of the judgment under challenge, it is clear that there is no evidence under which it can be said that the offence punishable under the Gujarat Cattle Disease Control Order, 1963 has been committed by the appellant-accused because none of the five buffaloes has been taken to veterinary doctor and the complainant had also not claim any expertise on this point. It is surprised that how and why the allegations made in the complaint in absence of any breach of conditions of the Control Order, 1963. The complainant mainly relies as assumed that these buffaloes must have been imported as the vehicle was coming from neighbouring District Surat. On careful reading of the Registration Book of the vehicle, the number and the details collected during the investigation reveals that the vehicle was proceeded towards Modhera from

Surat. So, in absence of any cogent evidence, it was not proper for the Court to infer that all these five buffaloes were brought or imported in Gujarat from neighbouring State. This logic is also directly apply to the allegation No.5 made in the complaint in reference to the Gujarat Import Cattle Order, 1982. It appears that vehicle detained was miny and complainant has not made any reference about the model or year of the model of the truck but is mentioned at one place that it was eicher model vehicle. From the document seized it appears that it must be a four wheeler otherwise the Police could have arrested the driver for the offence punishable under the Motor Vehicles Act. Of course, there is nothing on record but it is the experience of the Court that smaller size trucks are being addressed as tempo. The learned trial Judge has not held the accused guilty for importing animals from neighbouring State.

6. So far as allegation of breach of Rule 123 of the Gujarat Motor Vehicles Rules is concerned, the prosecution was supposed establish that there was no

proper arrangement for ventilation in the truck in which the buffaloes were being transported. On the contrary, it appears that animals were open to air with reasonable protection and therefore only the complainant was able to locate the vehicle and had attempted to stop the same when the Truck was near village Adalaj on the National Highway No.8. As the accused had not stopped the vehicle, it was chased and intercepted near IFCO Railway Crossing.

7. In the deposition of the complainant he has stated that he tried to stop the tempo while he was on petrolling as Live Stock Inspector, Civil Supply Branch, Ahmedabad. It was not stated by this witness that whether he was in uniform or the vehicle in which he was on petrolling was a government vehicle. The driver may not stop his vehicle on a call of civilian irrespective of a blow of whistle. So, the conduct of the accused for not stopping the vehicle cannot be said to be an incriminating conduct of the accused. A close reading of Rules, 123 reveals that a transporter of goods vehicles can carry animals in the truck and area if provided to each animal is as

per the area mentioned in the rule, then it can reasonably infer that each individual animal has been provided enough room to protect itself from the other animal and also qua the environmental facilities. In the vehicle in question five buffaloes were kept and they were being transported to Modhera. The place is within the territory of State of Gujarat. This is not a case of even exporting the buffaloes out of Gujarat even as per the evidence of the complainant. Neither the complaint nor the Panchnama reveals the floor size of the truck that was intercepted. The transporter was supposed to provide minimum space of 2 meter x 1 meter for carrying the animals. So, unless the prosecution proves that floor area of the truck was less than required as per Rule 123, the accused could not have been linked with the offence punishable under the Gujarat Motor Vehicles Rules. None of animal found injured otherwise the complainant ought to have mentioned this fact. If the space between the animals were less than required then, there is ample scope of causing injury to the animal. On the contrary, one document, i.e. receipt produced by the Investigating Officer reveals that

all these five animals were unloaded at a resident of one Desai capable of handling these buffaloes as he was also dealing in the business of cattle grassing otherwise the animals would have been taken to veterinary doctor. There is nothing in the judgment that what happened to the buffaloes that were handed over to Mr.Desai by P.S.O., with the help of the complainant.

8. This totality takes this Court to the conclusion that the learned trial Judge has linked the accused with the crime without any adequate and satisfactory proof in the nature of evidence. On the contrary, it appears that the complainant has tried to apply maximum legal provisions to carve out the case against the accused because accused had not stopped the vehicle in response to the signal given by the complainant. The ego of the complainant led him to lodge the serious offence against the appellant-accused.

9. Before concluding this judgment, the Court would like to observe that the Bombay Essential

Commodities and Cattle (Control) Act, 1958 which came to be adopted by the State of Gujarat in the year 1960 with a view to see that in the interest of general public the movement, supply and distribution and trade in the essential commodity defined in Clause-B of Section 2 and cattle defined in Clause-A of Section 2 can be regulated well. The essential commodity mentioned in sub-clause B is a commodity specified in Part-I of the schedule. Part-I of the schedule speaks only about bricks used for building purpose. So, as such these buffaloes were not essential commodities within the meaning of Bombay Essential Commodities and Cattle (Control) Act, 1958. Of course, the buffaloes were “cattle defined in Clause – A of Section 2”. The preamble of the Control Order reveals that Government is interested in regulating the import and export of the cattle and for that if need be licence, permit and authority for movement of cattle can be issued by the Officer who can be authorized by the Government. Use and keeping of cattle also can be kept under regulation. The movement of cattle within the State of Gujarat has not been regulated under Bombay Essential Commodities

and Cattle (Control) Act, 1958. As there was no evidence as to import of these buffaloes from the neighbouring State nor about its export to the other State by him, Section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1958 would not be attracted. Of course, the Prevention of Cruelty to the Animals Act, 1960 or violation of Rule 123 of the Gujarat Motor Vehicle Rules had room to play but for that prosecution has not led any evidence of convincing nature.

10. For short, there is no merit in the order of conviction and sentence. The finding recorded by the learned Judge is erroneous and the law referred to by the learned trial Judge, such conviction cannot be sustained.

11. In the result, Criminal Appeal No.1130 of 1997 is allowed. The judgment and order of conviction and sentence passed by the learned Special Judge, Mehsana in Essential Commodity Case No.5 of 1994, on 23rd October, 1997, is hereby quashed and set aside. The appellant-accused is acquitted from the charges

levelled against him. Bail Bond executed by the appellant-accused shall stand discharged. Amount of fine, if paid, by the accused person, be refunded to him on proper identification. Order and Direction accordingly.

(C.K.BUCH, J.)

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